IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1097 OF 2004

Kum. Kalawati d/o.Tukaram Mane since
deceased through her heirs and L.Rs
(a)Sou.Kalpana Mahadeo Patil & Ors. ...Appellants
Vs.
Baburao Sakharam Mane since deceased
through his heirs and L.Rs.
(a)Indutai Baburao Mane & Ors. ...Respondents

Mr.K.Y.Mandlik for Appellants
Mr.Pratap Patil for Respondents

CORAM: P.V.KAKADE,J.
DATED: 24TH JUNE, 2005

P.C.

1. Heard the learned Counsel for Appellants as well as on behalf of Respondents 1(a), 1(c) and 1(d). Respondent No.1(d) stands deleted. Remaining Respondents are served, but not present.

2. After hearing both the parties at some length and on perusal of the record I am satisfied that the matter is required to be remanded to the lower Court. Mr. Mandlik relies on the report copy Exhibit-28 made by the Appellants in the First Appellate Court under Order 41 Rule 27 of the Civil Procedure Code. A prayer was made in the said application for production of various documents including certified copies of 7x12 extracts and mutation entries. The said application was on 5th January, 2003. The First Appellate Court had directed that the parties will be at liberty to argue on the admissibility of the documents in evidence while arguing on the merits of the respective cases.

. There after my attention was invited to the finding recorded by the First Appellate Court in para No.17 of the Judgment. It is held that the documents which are produced along with the said Application at Exh.28 cannot be considered as there was nothing on record as to what prevented the Appellants from producing the said documents before the learned Trial Judge. It was also held that the documents produced along with the said application cannot be admitted in the evidence, simply because the same are admissible under Order 41 Rule 27 of the Civil Procedure Code. The first Appellate Court after noting that the said documents are extracts of public documents declined to look into the documents.

3. In view of this position I am of the view that the lower Appellate Court was clearly in error in rejecting to look into the said public documents which were allowed to produce earlier by order dated 5th January, 1995 and therefore, this aspect itself calls for remand of the matter for consideration of the entire issues involved afresh, as impugned documents would definitely have bearing over the issues at hand.

4. Hence, it is directed that the order passed by the Additional District Judge, Islampur dated 16th April, 2004 is hereby set aside.

. The matter stands remanded to the First Appellate Court for hearing afresh after giving opportunity to both the sides and considering the

relevancy and admissibility of the impugned documents which are sought to be produced on record in the course of the first appeal.

. The First Appellate Court is further directed to adjudicate the matter as early as possible and in any case within a period of **four months** from the date of receipt of **Writ** of this Court.

. It is clarified that in the mean time pending the hearing of the appeal in the First Appellate Court parties shall maintain status-quo in respect of the suit property.

. No order as to costs.

(P.V.KAKADE,J.)